

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**In The Matter of****Emergency Request for Limited
Exception to the Application
Freeze for the 928/952/956 MHz
Multiple Address System Bands****and****Amendment of the Commission's Rules
Regarding Multiple Address Systems****DA 99-2002****WT Docket No. 97-81****To: The Commission****REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys, and pursuant to Public Notice DA 99-2002 of the Federal Communications Commission ("Commission"),^{1/} respectfully submits the following Reply Comments in response to Comments filed by other participants regarding the *Emergency Request for Limited Exception to Application Freeze* ("Emergency Request") filed by API, the United Telecom Council ("UTC") and the Association of American Railroads ("AAR") (collectively, "CII Petitioners") on July 23, 1999. Because the Comments demonstrate

^{1/} See Corrected Public Notice DA 99-2002 (Sept. 29, 1999) (superseding Public Notice DA 99-1964 released on September 22, 1999).

overwhelming support for grant of the *Emergency Request*, the Commission's freeze on the filing of applications for use of the 928/952/956 MHz Multiple Address System ("MAS") bands should be lifted immediately, at least with respect to auction-exempt CII entities.

I. REPLY COMMENTS

1. The extensive record gathered with regard to the *Emergency Request* has failed to elicit any support for the MAS freeze Order imposed by the Commission on July 1, 1999. Instead, one party after another has expressed vehement and unqualified opposition to the freeze. Attached hereto as Exhibit A is a list of the *more than fifty* parties that have voiced their support for the *Emergency Request* and/or their opposition to the freeze Order either in Comments filed in response to Public Notices DA 99-2002/1964, DA 99-2003/1965 or DA 99-2004/1966, in Comments regarding the Commission's *Further Notice of Proposed Rule Making* in WT Docket No. 97-81 or in separate *ex parte* statements or pleadings.

2. Many of the testimonials filed in response to the Commission's freeze Order express outrage at the Commission's action, note serious concern that the freeze will negatively impact public safety and conclude that the freeze serves no legitimate

purpose. The following is a representative sample of the views and concerns put forth by CII entities, equipment manufacturers and other interested parties:

- ▶ The extension of the licensing freeze to the 928/952/956 MHz bands is shocking and borders on being irresponsible and reckless. . . . A freeze can be useful to preserve an unused band; but these bands are heavily licensed. Under these circumstances, the freeze makes no sense.^{2/}
- ▶ A continued freeze on the acceptance of applications for internal MAS systems filed by industrial users will adversely affect El Paso's ability to efficiently monitor and protect the safety of its natural gas pipeline system. . . . [N]o identifiable public interest is served by continuation of the freeze.^{3/}
- ▶ The extension of the freeze to state and local government entities and other public safety radio users is wholly unwarranted, contrary to Congressional intent and inconsistent with the underlying record in this proceeding. The application of the freeze to APPA's members impedes the ability of public power utilities to safely provide reliable electric service and frustrates ongoing energy system construction efforts that have been planned, budgeted and initiated by local governments around the country.^{4/}
- ▶ Because of this freeze, ongoing projects to upgrade switching and signaling systems that control long stretches of railroad have been halted. As long as this freeze remains in effect, these systems cannot be upgraded, increasing the potential that the reliability of these communications systems will be compromised.^{5/}

^{2/} Statement of Adaptive Broadband Corporation in Support of the Emergency Request for Limited Exception to Application Freeze at 4 (July 29, 1999).

^{3/} *Ex Parte* Letter of El Paso Energy at 2 (Aug. 30, 1999).

^{4/} Comments of APPA at 4-5 (Oct. 7, 1999).

^{5/} Comments of AAR at 2 (Oct. 7, 1999).

- ▶ The various applications deployed using MAS spectrum ensure the smooth delivery and operation of power services throughout America. For preventing emergencies, and in the case of emergencies, these services are nothing short of critical. . . . An application freeze works against this important need and may place the FCC in the position of having adopted rules that endanger the public.^{6/}
- ▶ Congress intended to protect [Public Safety Radio Services] spectrum users, so that they could continue to safeguard the safety, life, health and property [sic]. The application freeze, however, now places in jeopardy the expansion of these services which Congress saw fit to protect.^{7/}
- ▶ [T]he freeze on applications by companies in the Critical Infrastructure Industries will impose a severe hardship and disserve the public interest, but is unlikely to have any impact on future licensing in the band. The balance is not even a close one; the Commission should immediately lift the freeze on 900 MHz MAS applications.^{8/}

3. No party has, to API's knowledge, expressed overt support for the Commission's existing freeze Order. GTECH Corporation ("GTECH"), however, states that the Commission appears to be concerned "that absent an application freeze, potential applicants will flood the Commission with applications in order to obtain spectrum in advance of the auction, leaving virtually nothing for the Commission to auction should it decide to implement competitive bidding in the band."^{9/} GTECH further argues that the Commission could address the concerns noted by CII entities and others by modifying the

^{6/} Comments of Commonwealth Edison at 14 (Oct. 7, 1999).

^{7/} Petition of Midwest Energy, Inc., in Support of CII Petitioners' Emergency Request for Limited Exception to Application Freeze at 9 (Aug. 24, 1999)

^{8/} Comments of Itron, Inc. at 4 (Aug. 13, 1999).

^{9/} Comments of GTECH at 5 (Oct. 7, 1999).

freeze so as to apply “only to new, non-incumbent applicants,” thereby “permit[ting] incumbent licensees to make necessary modifications and reasonable expansions of their systems consistent with the purposes of the freeze and the public interest.”^{10/}

4. While the approach proposed by GTECH certainly would be preferable to the *status quo*, there is simply no reason to preclude *any* auction-exempt entity -- whether or not an incumbent -- from applying for a new authorization in the 928/952/956 MHz MAS bands. To begin with, there is no evidence that applicants “flooded” the Commission with MAS applications between February 1997 (when the prospect of auctioning MAS spectrum first was raised) and July 1999 (when the new freeze was imposed), nor is there any reason to believe that the lifting of the current freeze with respect to auction-exempt entities would cause such a result. As South Carolina Electric & Gas Company (“SCE&G”) explained in its Comments:

[T]he likelihood that any [CII entity] would convert itself into a spectrum speculator and obtain channels with no intent to construct but only to sell the frequencies is virtually nil. Additionally, the goal of discouraging speculation is only applicable to entities that intend to use spectrum for purposes that will be subject to auctions. Entities with uses for spectrum that will not be subject to auctions have no motivation for flooding the FCC with applications because *their* costs of obtaining spectrum will not change.

Comments of SCE&G at 13 (Oct. 7, 1999) (emphasis in original). Moreover, it would be both pointless and inappropriate for the Commission to implement auctions in the

^{10/} *Id.* at 6.

928/952/956 MHz MAS bands because: (1) these bands already are heavily encumbered, with little “white space” available; (2) the present licensing mechanism in these bands promotes efficiency and does not typically result in the filing of mutually exclusive applications; and (3) the bands are used predominantly by auction-exempt entities.^{11/} Accordingly, the perpetuation of the freeze against any CII entity or other auction-exempt applicant would impede potential public safety spectrum use without any corresponding benefit.

II. CONCLUSION

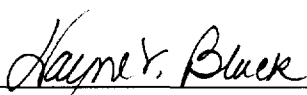
5. Congress enacted the “public safety radio services” exemption to ensure that vital public safety communications would not be jeopardized by the concurrent revisions made to the Commission’s auction authority. While the Commission may not have recognized the potential implications of its most recent MAS freeze Order at the time that it was imposed, there now can be no doubt that the freeze threatens public safety, is undermining Congressional intent and is not supported by the MAS user and manufacturer communities. API therefore implores the Commission to grant the *Emergency Request* without further delay.

^{11/} See *Emergency Request* and the numerous comments, letters and statements filed in support thereof.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Reply Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

**THE AMERICAN PETROLEUM
INSTITUTE**

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EXHIBIT A

Adaptive Broadband Corporation
Alabama Power Company
API
American Public Power Association
American Water Works Association
AAR
ARCO Pipeline Co.
Arkansas Oklahoma Gas Corporation
Berkeley Electric Cooperative, Inc.
Black & Associates
Blue Ridge Electric Membership Corporation
CAC Inc.
CellNet Data Systems, Inc.
CH2M HILL
City of Fort Smith Utility Department
City of Lodi Electric Utility Department
Cobb EMC
Commonwealth Edison
Consolidated Edison Company of New York
Du Page Water Commission
El Paso Energy
Electric Laboratories and Sales Corporation
Environmental Systems Corporation
Georgia Power Company
Gila Electronics
Gulf Power Company
Hornfeck Engineering, Inc.
Idaho Power Company
Itron, Inc.
Jackson Electric Membership Corporation
Joe Wheeler EMC
Kansas Electric Power Cooperative, Inc.
LaFollette Utilities Board
Lord & Company, Inc.
Microwave Telecommunications, Inc.
Midwest Energy, Inc.
Mississippi Power Company
NITECH, Inc.
Northern States Power Company
Pacific Gas and Electric
Public Service Company of Colorado
Public Service Company of New Mexico

Reliant Energy Arkla
Salt River Project
Savannah Electric & Power Company
Sensus Technologies, Inc.
Snapping Shoals EMC
Sola Communications, Inc.
South Carolina Electric & Gas Company
South Mississippi Electric Power Association
Talley Communications
Tampa Electric Company
UTC
Williams Energy Services